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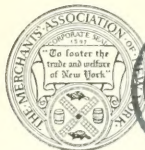
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Commerce and industry
association of New York.
Committee on public
utilities and law

For prevention of
railroad strikes

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The Merchants' Association of New York



FOR PREVENTION OF RAILROAD STRIKES

REPORT OF
Committee on Public Utilities and Law

AND

RAILROAD STRIKES: THEIR MENACE AND
THEIR LESSON: BY HENRY R. TOWNE

September, 1916

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ACTION ON THE FOLLOWING REPORT

THE Board of Directors of the Merchants' Association of New York at a meeting held September 21, 1916, received and by a unanimous vote approved the following Report of the Committee on Public Utilities and Law, and adopted the preambles and resolutions therein recommended.

S. C. MEAD,
Secretary.

FOR PREVENTION OF RAILROAD STRIKES

REPORT OF COMMITTEE ON PUBLIC UTILITIES AND LAW

NEW YORK, September 13, 1916.

*To the Board of Directors of
The Merchants' Association of New York.*

GENTLEMEN :

HAVING in view the grave injury to the public inseparable from railroad strikes, and the violation thereby of the public's rights, we recommend the adoption by The Merchants' Association of New York, of the following preambles and resolutions :

Whereas, The people of the United States have recently been confronted with the menace of partial or complete cessation of traffic on the railroads constituting the main arteries of communication among the people, thereby imperilling their comfort, safety and ability peacefully to pursue their customary avocations, and implying possibilities of suffering, loss or injury as grave as those resulting from a state of war ; and,

Whereas, It is the right of the people, and a vital need, that they shall be safeguarded in the future against the

danger thus implied, not only as to the railroads but also as to all other important public utilities operated by the corporations for the service of the people; and,

Whereas, No plan heretofore proposed provides, in the last analysis, absolute assurance, under any and all circumstances, against the interruption, by deliberate intention, of service by railroads and other public utilities; and,

Whereas, A plan based on the principal of a contractual relationship between public service corporations and each of their employees has been proposed and submitted to this Association which it is believed would be effective for that purpose, and which is regarded as entitled to serious consideration; now therefore be it

Resolved

- I. That The Merchants' Association of New York, deeply impressed by recent events and by the need of remedial legislation which shall guarantee the uninterrupted operation of public utilities, regards the plan for this purpose, based upon the principal of a contractual relationship, proposed by its former president, Mr. Henry R. Towne, as embodying a possible solution of the problem, and commends the same to the fair and thoughtful consideration of the public.
2. That, in order to promote a general understanding and discussion of said principle and plan, this Association purposes to submit it to the Chamber of Commerce of the United States of America, of which this Association is a constituent member, with the recommendation that

this proposition be submitted to the membership of the Chamber by a Referendum, whereby to ascertain the judgment of the business organizations of the country on its merits.

3. That, for like reasons, the plan as submitted by Mr. Towne, and his argument in support of it, be published in "Greater New York," and be printed for distribution to the press and the public.

We further recommend the adoption of the following preambles and resolutions, requesting action by the Chamber of Commerce of the United States:

Whereas, The functions of railroads and other public utilities are exercised only by virtue of public authority, delegated to the corporations solely to provide for imperative public needs; whereby such utilities become public agencies, subject to such control and regulation by law as may be required in the public interest; and

Whereas, The public welfare requires that the operation of public utilities be continuous and unimpeded; and

Whereas, Continuous and unimpeded operation of public utilities cannot be maintained if the employees of public service corporations are free to quit their employment at an indeterminate time; now, therefore, be it

Resolved, That the tenure of service of employees of public service corporations, particularly of transportation corporations, should be regulated by law in such manner that each person who voluntarily elects to enter such employ-

ment shall, as a condition of such employment, be legally obligated by contract to continue therein for a specified term, during which term he may not lawfully quit that employment nor the corporation lawfully discharge him from its service, except as provided by such contract; and that such contract should provide adequate penalties for violation of its terms by either party.

Resolved, That The Merchants' Association of New York, as a constituent member of the Chamber of Commerce of the United States, requests that Chamber:

1. To cause a referendum vote of its members to be taken upon the proposition stated in the preceding resolution.
2. If said proposition is approved by such vote, to formulate through a committee of the Chamber, co-operating with public service corporations, representatives of their employees, and others whose counsel would be of service, a draft of a legislative bill suitable to effect the purpose stated; to cause such bill to be introduced in Congress; and to prepare a memorial for presentation to Congress and for general public distribution in explanation and support of the proposed legislation.

COMMITTEE ON PUBLIC UTILITIES AND LAW,

E. H. OUTERBRIDGE, *Chairman*,
EDWARD C. BLUM,
A. W. DUNNING,
JOHN C. EAMES,
F. A. MOLITOR,
HENRY R. TOWNE,
CLARENCE WHITMAN.

RAILROAD STRIKES

THEIR MENACE AND THEIR LESSON

BY
HENRY R. TOWNE

August 30, 1916

THE events of August, 1916, have focussed public attention upon a National problem which imperatively calls for solution. They have shown the existence of a self-constituted power exercised as though co-ordinate with that of the Federal Government, an *imperium in imperio*, which the President of the United States has felt constrained to negotiate with, which has notified him of its terms, and whose terms he has deemed it expedient to accept and to urge upon Congress, as a basis for hasty legislation, in order thus to save the people from threatened calamity deliberately plotted. Until Congress acted the threat remained effective and the country in painful suspense. The situation is intolerable, and the public demands that a remedy be found.

That such a situation could develop is due chiefly to two causes, namely, (1) the vast growth in number, size and importance to the community of Public Utility Corporations, and (2) the coincident and almost equal growth in numbers, power, and influence, both for good and for evil, of Organized Labor.

The history of the public utility corporation is substantially similar in all its many fields, whether organized to oper-

ate railroads, trolley lines, etc., to supply gas or electric light and power, or to operate telegraph and telephone lines. In each and every case the State or the Community has endowed the corporation with some of its sovereign powers, and has granted to it a partial or complete monopoly of certain valuable privileges, in return for which the corporation has undertaken to perform certain services for the community which are so necessary or so useful as to justify the grant of the privileges covered by its franchise. By the terms of that franchise, and by the provisions of statute law, the corporation is bound to render the stipulated service as a condition of the retention of the franchise.

The history of organized labor shows that its fundamental purpose has been to benefit the industrial and social condition of its members in matters of wages, hours of work, and conditions of employment by the force of concerted action and influence where the power of the individual would be ineffective. With that purpose, when sought by legitimate means, the enlightened public has always been in full and sympathetic accord.

But, as to both groups, time and growth have wrought changes which are profound in character and effect, which have created new problems, and which demand new provision for the adequate protection of the community from the misuse of the vast powers which it has delegated in the one case, and permitted to develop in the other.

Taking, as an example in the *first* group, the case of a typical railroad, we find that it was organized, perhaps 50 or 60 years ago, to afford communication between two adjacent cities, and for the intervening territory; that it was urgently needed and greatly desired, but the doubtfulness of the investment made the enlistment of capital difficult, and necessitated perhaps the granting of special concessions to attract

the necessary funds; that the road prospered, was extended and was consolidated with others, and that today it is a vital component in a great system; that it is no longer merely a desired addition to previous means of communication, but a vitally important factor in the industry, commerce and life of a great community or of the nation; that in earlier years, it abused its powers and privileges to oppress the people by whom they were granted; that this evil was corrected by legislation, both state and national; and that today, while owned by its stockholders, it is operated as a semi-public property, under statutory laws and under the control and regulation of Commissions created by the State or Federal governments, which largely determine what it may do and what it may charge for its services. In brief, the fact is now recognized that it is a creature of the State, created by the people to provide certain facilities essential to their welfare, and properly subject to such supervision and control as may be necessary to protect the interests of the people.

Taking as an example of the *second* group, the case of a typical trade union, we find that it was organized, perhaps 20 or 30 years ago, say by one of the building trades, to secure for its members better conditions of employment than they had previously enjoyed, that by concerted action they had secured higher wages, shorter hours, and other advantages; and that these results had been achieved in part by resort to strikes when other means had failed. Assuming that strikes, when resorted to, have not been accompanied by violation of law, it will be conceded that the purposes sought and the results achieved were not merely proper but highly commendable, and this has been the judgment of enlightened public opinion. If at times, as the power of organized labor has grown by vastly increased numbers and by the consolidation of units, it has been abused, and has been exercised not

only for good but also for evil, we may properly attribute the latter fact to bad guidance and leadership, rather than to bad intentions on the part of the membership at large.

But when we come to consider a case which involves the *combination of the two groups* we find a new condition affecting the second group which requires consideration. In the case above supposed, one of the building trades, there were only two parties directly concerned, namely, the employer and the employees; the public, while perhaps taking a sympathetic interest, having no vital or direct concern regarding the outcome. But when we consider a case involving both groups, that is, a public utility corporation and some or all of its employees, we find that there are *three parties* directly concerned, the third party, and the one having the *chief* interest, being the public, the people, by whom the franchise was granted under which the corporation exists and acts, and by virtue of which the employees have been enabled to find employment in its service. To this third party, the people, it is a matter of vital concern that the service, to obtain which the franchise was granted, shall not be interrupted, least of all by either one or the other of the parties who are the beneficiaries of the franchise, one of whom thus finds employment for its capital and the other for its labor. Just as the former, the public utility corporation, is required under its franchise to perform the stipulated service for the public convenience, so also should the latter, the body of its employees, be required, as a condition of entering its employ, to abstain from any act, of commission or omission, tending to interrupt the service or designed to have that effect. The act of entering the employ of a public utility corporation is voluntary. Each individual who enters it does so of his own free will. He knows, or should know, that the corporation operates a public utility, for the benefit and convenience of the people, and it

should be required of him, by law, that, as a condition of employment under such a corporation, he shall agree in advance not to do anything knowingly, alone or in combination with others, designed or tending to interrupt the service to the people for which the corporation was chartered by them. In so doing he would surrender no right to liberty of action except the right to inflict injury on the public in the pursuit of selfish ends, and this right is one which the people may justly require to be surrendered by those who voluntarily seek employment in a service created by act of the people for the benefit of all the people, including organized labor itself.

In earlier days, there was little or no legislation for the regulation either of the corporations or of labor, but both have grown to a power and importance which makes regulatory legislation essential to the public welfare. It already exists as to the public utility corporation, and its propriety is universally conceded. It is equally needed and equally proper as to those who choose to seek employment in the service of the public utility corporation, and the people, for the protection of their just rights, should see that it is enacted as speedily as may be consistent with due regard for the rights of all concerned, including those of the employees. Such legislation would imply no antagonism to organized labor; on the contrary, the co-operation of the latter in framing it should be welcomed and sought, and should be given, and the legislation should be so framed as to leave all existing legal rights of the employees unimpaired, save only that it would prohibit concerted action designed to cause *interruption of the service*. Continuity of the service would be the sole object sought. This is essential to the welfare of all the people, and no group or class should be permitted to endanger it. For the members of any group to claim or seek the right to inflict vital injury upon all the rest of the community would

in effect be tantamount to a declaration that such members were not loyal citizens of the State but public enemies.

The last assertion is not an exaggeration but a plain statement of fact. If such right is conceded to one group, it must be conceded to all groups of employees of public utility corporations, and if all such groups should conspire to arrest the functioning of all public utilities greater injury, suffering and loss would thereby be inflicted on the community than any foreign foe could possibly accomplish, and the majority of the innocent victims would comprise the helpless women and children. Cessation of functioning by the railroads would mean deprivation of fuel (for heat, cooking and power) of milk for infants, of food, and of means of transit, and the stoppage of mail service; by the trolley lines would mean deprivation of means of urban transit to shops and places of employment; by gas and electric companies would mean deprivation of lighting (both public and private) and of the power used by nearly all minor industries; by telegraph and telephone lines would mean deprivation of all facilities for quick and urgent communication; by water companies would mean the cutting off of water supplies indispensable for power purposes, for fire protection and to human life itself. The possibilities thus involved would imply a catastrophe greater in the sum of its suffering and horrors than of the dreadful war which is now devastating Europe. Fortunately the menace of such a catastrophe is removable by those whom it threatens, the people, and it has become their plain duty to remove it now by suitable legislation. To be completely effective, as to all public utilities, both Federal and State legislation will be needed, but as the most imminent need is for legislation relating to the railroads, and as their operations consist very largely of interstate business which is subject to Federal control, it is clearly expedient that the initiative

should be taken by Congress, especially as legislation enacted by it, if wisely and conservatively framed, will serve as a model or basis for legislation by the several states, and thus tend to promote uniformity of practice throughout the country.

Remedial legislation of other kinds is proposed and is under consideration, especially for the purpose of enforcing resort to arbitration for the adjustment of disputes between employers and employees in cases where other means have failed, and it is greatly to be hoped that such legislation, when perfected, may be enacted into law, but all such legislation thus far proposed, however useful in other respects, fails to assure the ultimate and vital object, namely, the *absolute prevention of the interruption of the service* of public utility corporations, by the concerted action of those who voluntarily have sought and obtained the privilege of engaging in such service. Until legislation is enacted which will accomplish and assure this result the menace of catastrophe to the people will remain, diminished perhaps, but not removed. It should be removed, completely and finally. The way herein pointed out is the *only one* thus far proposed which will accomplish that result.

To facilitate the consideration of the proposition thus submitted there is given below an analysis of the plan, and a tentative outline of some of its most essential features, together with a suggestion of a method for elaborating its remaining details, and for initiating the necessary legislation.

THE PLAN.

Any plan to regulate the relations between Public Service Corporations and their employees should be based on recognition of the following fundamental facts: viz.—

1. The Company enjoys a partial or complete monopoly, granted by the State in order to secure for the people the service which the Company undertakes to render.
2. In return the Company is required to render that service in conformity with statutory enactments, and under the regulation of a State (or National) board or commission.
3. In order to perform that service the Company must act through agents or employees, and it is equally necessary and proper that these should be governed by statute, and be subject to regulation by such board or commission. Heretofore this has not been done, or only in slight degree.
4. There are thus *three parties* concerned, viz.—

(1) The People: that is, the State.

(2) The Corporation, including its owners, the stockholders.

(3) The Employees.

The plan should aim to recognize and safeguard equally the rights and interests of *each* and *all* of these three parties.

5. To do this, it should provide

(1) That the Company shall give adequate service, and shall conform to the law and to the orders of the board or commission.

- (2) That persons who voluntarily become employees shall conform to the laws and regulations, and shall not conspire to impair the service.
- (3) That the two parties, the Company and the employees, shall recognize and respect the paramount rights of the third party, the Public, to adequate and uninterrupted service in return for the grant of the franchise under which the Company operates and by virtue of which those who enter its service find employment.

Laws and Regulations which are based on recognition of these facts and which are designed to accomplish these results, are not merely proper and justifiable, but are logically called for to define and assure the rights of the Companies and their stockholders, the rights of their vast number of employees, and, above all, the rights of the State, that is the People, which is the grantor of the public franchise which is the basis of the whole structure, the sole purpose of which is to obtain for the people the *service* stated in the franchise. Opposition to such reasonable laws and regulations would constitute a menace to the common weal.

To accomplish these ends, there is needed legislation, State or National, or both, which would authorize and require, among other things, a *contractual relationship* between each Public Service Corporation and each of its employees embodying the following provisions, viz.—

1. An enlistment or enrollment contract for a stated term. After a probationary period, in the case of a new employee; removable by mutual agreement, at the end of term, in the case of an old employee.

2. A "service record" of each employee, to be kept.
3. Preference in promotions, and in retention in the service, to be based on such records.
4. Penalties for violation of the contract by either party, to consist of cash fines.
5. Fines against Company to be collectible from a fund created by the Company and vested in a trustee.
6. Fines against an employee to be collectible from a fund created by the Company's retaining, say 20% of his wages until the fund equals two week's wages (would require 10 weeks). The Company to pay interest at 5% on this fund, and to repay it when the employee leaves the service as prescribed in the contract, or dies. The fund to be in the custody of a trustee.
7. Schedule of fines to be fixed by law and stated in the contract.
8. Assessment of fines to be determinable.
 - (a) By mutual consent, duly recorded.
 - (b) By joint Board of Award, duly appointed.
 - (c) By Public Service Commission on appeal.
 - (d) By legal process.
9. The Company to have the right to terminate the contract.
 - (a) Because of misconduct by the employee. "Misconduct" to be defined by law and in the contract, and also the fines attaching thereto.

- (b) Because of slack business or excess of help. In this case the employee to receive either 30 days' notice, or two weeks' pay and immediate release.
 - (c) Because of disability or superannuation of employee, on stated notice, subject to such pension provisions, if any, as may exist.
- 10. The employee to have the right to terminate the contract.
 - (a) Because of valid family or personal necessity. In which case, honorable discharge, without penalty.
 - (b) Because of sickness or of unfavorable effect on health.
 - (c) For cause not stated, upon fair notice, say 30 days, without penalty if with the Company's consent; otherwise subject to fine, as provided by law and stated in the contract.
- 11. Violation of the contract by the Company, if duly established, to subject it to stated fines, payable to the employee, from the fund vested in a trustee.
- 12. Violation by the employee, if duly established, to subject him to fines collectible by the Company from the fund held for that purpose by a trustee; and also, under specified conditions, to forfeiture of wages earned but not yet paid.
- 13. The Company to recognize the right of the employee to membership in any lawful organization, and not to discriminate against him on such account.

14. The employee to respect the right of the public to uninterrupted service, and not to combine with others to cause its interruption.
15. The employee to have the right, alone or in combination with others, to request concessions, in wages, hours of work, or conditions of service, from the Company, and the Company to give prompt and fair consideration to all such requests when properly presented, and not to discriminate against any employee because of participation therein.
16. The employee to have the right of appeal, from acts or decisions of the Company, to a "Joint Board of Award," constituted under the law by joint action of the Company and its employees, as a Board of Arbitration.
17. Both the Company and its employees to have the right of appeal from the rulings of the "Joint Board" to an appropriate Federal or State Commission, whose decisions shall be conclusive and binding, unless and until reversed by a court decision.
18. During the term of any contract between the Company and an employee the discharge of the employee by the Company (except as provided in No. 9 above), or the cessation of service by the employee (except as provided in No. 10 above), to be constituted an offence at law, and to be punishable as the law may prescribe.

The foregoing is merely an outline of the most essential features of the proposed "contractual relationship" between the Company and each of its employees; it does not pretend

to be comprehensive, complete or final. Probably many various forms would be needed to meet the many varying conditions existing in various localities and in the various public utilities.

While legislation on these lines should ultimately be enacted by the several States, to apply to intra-state corporations and their employees, legislation by Congress, to apply to all inter-state business, would also be needed and preferably should *precede* State legislation, because of the resulting tendency to promote uniform practice throughout the country.

The ideal method for inaugurating such a plan would be as follows: viz.—

1. For some broadly representative national body, such as the Chamber of Commerce of the United States, to formulate, endorse and present an outline of its essential features, and to invite widespread public discussion and suggestion as to details.
2. The Chamber of Commerce of the United States thereafter, in co-operation with representatives of public service corporations and their employees, to draft a legislative bill suitable to effect the purpose stated; to cause such bill to be introduced in Congress; and to prepare a memorial for presentation to Congress and for general public distribution in explanation and support of the proposed legislation.

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